Arthur Andersen & Co.
Chartered Accountants

44 King Street West,
Toronto 1.

January 14, 1964.

Mr. Lancelot J. Smith
Chairman
Ontario Committee on Taxation
86 University Avenue
Toronto, Ontario.

Dear Mr. Smith:

Mr. A. D. McAlpine has informed us that he has discussed with you the possibility of making a submission to the Ontario Committee on Taxation on behalf of a mutual fund which is a mutual client of Mr. McAlpine's firm and Arthur Andersen & Co.

We enclose two copies of a submission which we have made to the Ontario Institute of Chartered Accountants Taxation Committee. Would you kindlyconsider this for presentation to the Ontario Committee.

Thank you for your co-operation in this matter.

Yours very truly,

ARTHUR ANDERSEN & CO.

By: William Devlin.

Recommendation

It is recommended that section 4 of The Corporations Tax Act of Ontario be amended to provide an appropriate means of allocation of investment income to jurisdictions outside Ontario for a company which is a mutual fund.

We recommend the addition to Section 4 of a sub-section similar to the present subsection (17), substituting the words "mutual fund" for the words "a trust and loan corporation or a trust corporation or a loan corporation". The gross revenue attributable to a permanent establishment could be defined as "that arising from investments administered and situated in that jurisdiction".

Reasoning

A mutual fund may have permanent establishments both in Ontario and in other jurisdictions. All, or a large part of the investment decisions and transactions may be carried out at the permanent establishments outside Ontario.

Subsection (1) of section 4 of The Corporations Tax Act imposes a tax of 11 per cent of the taxable income which is earned in each jurisdiction outside Ontario. The method of calculation of the taxable income earned in each jurisdiction outside Ontario is outlined in subsections (5) to (34) of section 4.

Since none of the special methods of allocation is applicable to mutual funds, the formula outlined in subsection (5) of section 4 must be used. However, by virtue of subsection (9) of section 4, interest on bonds, debentures, mortgages and dividends are to be excluded when calculating gross revenue for purposes of subsection (5). This can mean that the mutual fund will have no gross revenue for purposes of allocation. Therefore, the maximum amount of income which can be allocated to jurisdictions outside Ontario is 50 per cent. This principle produces an obviously unfair result where the permanent establishment in Ontario is nominal in character, e.g. a technical head office in Ontario, and the real effort from which the investment income results is conducted outside Ontario and probably outside Canada. It is unrealistic to allocate 50 per cent of the investment income to Ontario under such circumstances.

There seems to be no reason why a special formula, such as is provided for trust and loan companies, should not be provided for mutual funds.

Recommendation

It is recommended that section 4 of The Corporations Tax Act of Ontario be amended to provide an appropriate means of allocation of investment income to jurisdictions outside Ontario for a company which is a mutual fund.

We recommend the addition to Section 4 of a sub-section similar to the present subsection (17), substituting the words 'mutual fund' for the words 'a trust and loan corporation or a trust corporation or a loan corporation'. The gross revenue attributable to a permanent establishment would be defined as 'that arising from investments administered and situated in that jurisdiction'.

Discussion

A mutual fund may have permanent establishments both in Ontario and in other jurisdictions. It, or a large part of the investment dealings and transactions may be carried out at the permanent establishments outside Ontario.

Subsection (1) of section 4 of The Corporations Tax Act to impose a tax of 11 per cent of the taxable income which is earned in each jurisdiction outside Ontario is modified in subsections (2) to (5a) of section 4.

Since none of the special methods of allocation is applicable to mutual funds, the formula outlined in subsection (3) of section 4 must be used. However, by virtue of subsection (9) of section 4, interest on bonds, debentures, mortgages and dividends are to be excluded when calculating gross revenue for purposes of subsection (3). This can mean that the mutual fund will have no gross revenue for purposes of allocation. Therefore, the maximum amount of income which can be allocated to jurisdictions outside Ontario is 50 per cent. This principle produces an obviously unfair result where the permanent establishment in Ontario is mutual in character e.g. a terminal haul office in Ontario, may the most effort from which the investment income results is maintained outside Ontario and presently outside Canada. It is unrealistic to allocate 50 per cent of the investment income to Ontario under such circumstances.

There seems to be no reason why a special formula, such as is provided for trust and loan corporations, could not be provided for mutual funds.

February 11, 1964

JOINT SUBMISSION OF

ARTHUR ANDERSEN & CO.

and

WAHN, McALPLINE, MAYER, SMITH, CREBER, LYONS, TORRANCE & STEVENSON

Recommendation

It is recommended that section 4 of The Corporations Tax Act of Ontario be amended to provide an appropriate means of allocation of investment income to jurisdictions outside Ontario for a company which is a mutual fund.

We recommend the addition to Section 4 of a subsection similar to the present subsection (17), substituting the words "mutual fund" for the words "a trust and loan corporation or a trust corporation". The gross revenue attributable to a permanent establishment could be defined as "that arising from investments administered and situated in that jurisdiction".

Reasoning

A mutual fund may have permanent establishments both in Ontario and in other jurisdictions. All, or a large part of the investment decisions and transactions may be carried out at the permanent establishments outside Ontario.

Subsection (1) of section 4 of The Corporations Tax Act imposes a tax of 11 per cent on the taxable income of the mutual fund. Subsection (2) of section 4 permits a deduction from tax equal to 11 per cent of the taxable income which is earned in each jurisdiction outside Ontario. The method of calculation of the taxable income earned in each jurisdiction outside Ontario is outlined in subsections (5) to (34) of section 4.

Digitized by the Internet Archive
in 2025 with funding from
University of Toronto

https://archive.org/details/submissionstaxat075onta

Since none of the special methods of allocation is applicable to mutual funds, the formula outlined in subsection (5) of section 4 must be used. However, by virtue of subsection (9) of section 4, interest on bonds, debentures, mortgages and dividends are to be excluded when calculating gross revenue for purposes of subsection (5). This can mean that the mutual fund will have no gross revenue for purposes of allocation. Therefore, the maximum amount of income which can be allocated to jurisdictions outside Ontario is 50 per cent. This principle produces an obviously unfair result where the permanent establishment in Ontario is nominal in character; e.g., a technical head office in Ontario, and the real effort from which the investment income results is conducted outside Ontario and probably outside Canada. It is unrealistic to allocate 50 per cent of the investment income to Ontario under such circumstances.

There seems to be no reason why a special formula, such as is provided for trust and loan companies, should not be provided for mutual funds.